IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

OP.No. 7395 of 2001(E)

PETITIONER:

N. MOHANDAS, U.D. CLERK, CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM

BY ADV. SRI.N.SUGATHAN
SRI.KRB.KAIMAL

RESPONDENTS:
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1. THE HON'BLE HIGH COURT OF KERALA REPRESENTED BY THE REGISTRAR, HIGH COURT OF KERALA, ERNAKULAM.

2. THE CHIEF JUDICIAL MAGISTRATE, KOLLAM.

BY GOVERNMENT PLEADER SRI.SHYSON P. MANGUZHA.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1: TRUE COPY OF MEMO OF CHARGES DT. 1/1/97.

EXT.P2: TRUE COPY OF EXPLANATION DT. 17/1/97.

EXT.P3: TRUE COPY OF REPRESENTTION DT. 5/3/97.

EXT.P4: TRUE COPY OF SHOW CAUSE NOTICE DT. 7/9/97.

EXT.P4(A): TRUE COPY OF ENQUIRY REPORT.

EXT.P5: TRUE COPY OF REPLY SUBMITTED BY PETR. TO R2.

EXT.P6: TRUE COPY OF ORDER DT. 10/11/97.

EXT.P7: TRUE COPY OF APPEAL DT. 2/1/98.

EXT.P8: TRUE COPY OF ORDER DT. 20/11/2000 OF R1.

A. K. Basheer, J.

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O.P.No. 7395 Of 2001-R

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Dated this the 21ST day of December, 2006.

JUDGMENT

Is the order of punishment imposed on the petitioner legally valid and sustainable? The above question has come up for consideration in this original petition in the following facts and circumstances.

2. Petitioner, while he was working as Upper Division Clerk in the Court of the Judicial Magistrate of First Class-I, Kollam, was served with Ext.P1 memo of charges along with statement of allegations dated January 1, 1997 alleging that he had "caused the loss of material objects in C.C.No.725/1993 pending on the file of that Court. It is revealed from Ext.P1 that the above memo of charges was issued to the petitioner on the basis of a preliminary enquiry report dated October 17, 1996 furnished by the Judicial Magistrate of First Class-I, Kollam. In response to the memo of charges, petitioner had submitted Ext.P2 explanation. Thereafter, the Judicial Magistrate of First Class, Sasthamcotta was appointed as the Enquiry Officer who completed the enquiry and submitted his report, a copy of which is on record as Ext.P4(a). The enquiry officer found that there was no sufficient material to hold that the petitioner was guilty of the charges levelled against him. Accordingly, he was found not guilty.

3.However, respondent No.2, the disciplinary authority disagreed with the finding of the enquiry officer and took the view that "the petitioner was responsible for the loss of the articles/documents." Consequently, Ext.P4 notice was issued by respondent No.2 directing the petitioner to show cause why he should not be reduced to the rank of a Lower Division Clerk for a period of five years in the scale of pay of Rs.950-20-1150-25-1500. Though the petitioner submitted Ext.P5

reply to the show cause notice, the disciplinary authority did not accept the contentions raised by him. By the impugned order dated November 10, 1997 the disciplinary authority held that petitioner who was working as an Upper Division Clerk at that time, was liable to be reduced in rank to the post of L.D. Clerk for three years. The appeal preferred by the petitioner against the above order before respondent No.1 ended in dismissal. Ext.P8 is the copy of the order passed by respondent No.1.

4. The prayer in this original petition is to issue a writ of certiorari to quash Exts.p6 and P8 orders. There is a further prayer to issue a writ of mandamus or such other appropriate writ, or direction to grant all consequential service benefits including arrears of salary to the petitioner treating as though he had not been reverted from the post of Upper Division Clerk.

5. Learned counsel for the petitioner submits that Exts.P6 and P8 orders are ex-facie illegal and vitiated in as much as the disciplinary authority had not granted an opportunity to the petitioner to be heard before deciding to impose the penalty of reversion. It is contended by the learned counsel that if the disciplinary authority decided to disagree with the finding entered by the enquiry officer, he ought to have put the petitioner on notice and given him an opportunity to be heard. What the disciplinary authority had done was that he had disagreed with the findings of the enquiry officer even without hearing the petitioner. The authority decided that the petitioner was liable to be reverted for five years from the post of U.D.C. To the post of L.D.C. In this connection, learned counsel has invited my attention to the following decisions of their Lordships of the Supreme Court in **Punjab National Bank and others v. Kunj Behari Misra** (1998 (7) SCC 84) and **Yochnath**

D.Bagde v. State of Maharashtra and others (1999 (7) SCC 739) and also a decision of the Division Bench of this court reported in **State of Kerala v. Venugopal** (2002 (1) KLT 146). In Kunj Behari's case (supra) the Supreme Court held thus:

> "Whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer." (emphasis supplied)

In the case on hand, the disciplinary authority had, even without issuing notice to the petitioner, come to the conclusion that the report of the enquiry officer was liable to be rejected. Ext.P4 is a composite notice in the sense that the disciplinary authoirty had recorded its finding that the conclusion made by the enquiry officer was not tenable or acceptable and simultaneously had decided to impose the punishment of reversion on the petitioner. The disciplinary authority could not have resorted to such a procedure. Undoubtedly, the above

action of the disciplinary authority is clearly in violation of the principles of natural justice. Therefore, I have no hesitation to hold that the action of the disciplinary authority is vitiated. The appellate authority had not adverted to this aspect at all while passing Ext.P8 order. For that sole reason, I am satisfied that the order passed by the appellate authority is also liable to be set aside. In view of the above finding, I do not deem it necessary to deal with the other contentions raised by the learned counsel for the petitioner with regard to the non-supply of the copy of the preliminary report of the enquiry officer though I am satisfied that there is considerable force in the above contention as well.

6. It is on record that petitioner had made a request before the disciplinary authority to serve him a copy of the said report. But the request was not acceded to. In my view, the impugned orders are liable to be set aside for that reason also. In any view of the matter, I am satisfied that the impugned orders are liable to be quashed.

The original petition is therefore allowed. Exts.P6 and P8 orders are quashed. However, it is made clear that it will be open to the disciplinary authority to pass fresh orders in the matter and take further action, if so advised. Any further action shall be taken only after issuing notice to the petitioner. The disciplinary authority shall ensure that the proceedings, if any to be initiated are completed within two months from the date of receipt of a copy of this judgment, since it is brought to my notice that the petitioner is due to retire from service within nine months.

(A.K. Basheer)

an. **Judge.**

A.K. BASHEER, J.

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O.P. NO.7395 OF 2001

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JUDGMENT

21ST DECEMHER, 2006.